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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

In Re:) Case No. 17-42072 CN 13
DESMOND GUMBS,)
Debtor.) Chapter 13
) **OBJECTION TO CONFIRMATION OF**
) **CHAPTER 13 PLAN [filed 09/15/2017];**
) **AND REQUEST TO DISMISS CASE.**
)

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN and
REQUEST TO DISMISS CHAPTER 13 CASE

Randolph Bush dba Applied Judicial Research ("Creditor") hereby objects to the confirmation of the debtor's Chapter 13 Plan, filed September 15, 2017, on the following grounds:

I. BASIS OF OBJECTION.

1. On August 15, 2017, debtor filed his voluntary petition under Chapter 13 of the Bankruptcy Code.
2. On September 15, 2017 the debtor filed his Schedules and Statement of Financial Affairs and a Chapter 13 Plan.
3. The debtor's Chapter 13 Plan purports to be a 100% plan. However, the Plan fails to take into account significant claims of which the debtor had knowledge at the time of his filing of the bankruptcy and at the time of the filing of the Schedules and Chapter 13, Plan; which claims are

1 not disclosed in the debtor's Schedules nor in the currently proposed Plan.

2 4. Specifically, the Schedules and the currently proposed Plan fail to disclose that
3 the debtor owes this creditor, Randolph Bush, the sum of \$850,624.71 and lists the debt amount as
4 "unknown" on Schedule E/F, while knowing full well that the judgment is secured by an Abstract of
5 Judgment. (See, Schedule E/F, Claim No. 4.4).

6 5. The Plan as currently proposed (payment of mortgage outside the Plan and
7 payment of unsecured creditors 100% by payment of \$1,000 per month for 60 months) is not feasible.
8 11 U.S.C. §1325(a)(6). The debtor's proposed \$1,000 per month for 60 months only totals \$60,000;
9 and that amount will not pay off 100% of the debt owed to Mr. Bush, which is in excess of \$850,000.
10 Moreover, the Schedules are false in that Mr. Gumbs does not list the debt to Mr. Bush as secured.
11 See, Abstract of Judgment recorded on May 9, 2017, attached hereto as Exhibit "A"; and Renewal of
12 Judgment, entered on January 26, 2017, attached hereto as Exhibit "B".

13 6. Not only is the Plan not proposed in good faith, in violation of 11 U.S.C. §
14 1325(a)(3), but the \$850,624.71 debt owed to Mr. Bush, whether treated as secured or unsecured,
15 renders Mr. Gumbs ineligible to be a Chapter 13 debtor under 11 U.S.C. § 109(e).

16 **II. POINTS AND AUTHORITIES.**

17 11 U.S.C. §1322(a) provides that a plan shall provide for certain payments to creditors
18 and for payment of claims within specified classes. Pursuant to 11 U.S.C. §1325(a)(1) the Court can
19 only confirm a plan **if** the plan complies with the provisions of Chapter 13 and with other applicable
20 provisions of this title. 11 U.S.C. §1325(a) provides that the Court shall **only** confirm a plan if certain
21 criteria set forth in §1325(a) is met.

22 The debtor carries the burden of proving, by a preponderance of the evidence, that the
23 plan complies with the statutory requirements of confirmation. *Austin v. Bankowski (In re Austin)*, 519
24 B.R. 559, 563 (D. Mass. 2014). As stated in *Austin v. Bankowski, supra*:

25 To obtain confirmation under Section 1325(a), the burden is on the debtor to
26 prove that each of the statutory criteria for confirmation is met. See *In re*
27 *Haque*, 334 B.R. 486, 489 (Bankr. D. Mass. 2005) (holding that under Section
28 1325(a)(3), the burden of proof is on the debtor); see also *In re Virden*, 279
B.R. 401, 407 (Bankr. D. Mass. 2002). In undertaking its review, the

1 bankruptcy court “should exercise [its] judicial discretion and assess the
2 evidence to ensure that [the proposed Chapter 13 plan] meets the guidelines
3 established by [S]ection 1325.” *First Nat’l Bank of Boston v. Fantasia (In re*
4 *Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997) (citing *Fidelity & Cas. Co.*
5 *of N.Y. v. Warren (In re Warren)*, 89 B.R. 87 (B.A.P. 9th Cir. 1988)).

6 In this case, there can be no doubt that the proposed Chapter 13 Plan is proposed in bad
7 faith and is not feasible. The debtor is not eligible to be a Chapter 13 debtor. Bankruptcy Code section
8 109, subpart (e) defines a Chapter 13 debtor as follows:

9 Only an individual with regular income that owes, on the date of the filing of
10 the petition, noncontingent, liquidated, unsecured debts of less than \$394,725
11 and noncontingent, liquidated, secured debts of less than \$1,184,200, or an
12 individual with regular income and such individual's spouse, except a
13 stockbroker or a commodity broker, that owe, on the date of the filing of the
14 petition, noncontingent, liquidated, unsecured debts that aggregate less than
15 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000
16 may be a debtor under chapter 13 of this title.

17 Given that the debtor owes Mr. Bush over \$850,000, and claims that his home is only
18 worth \$780,000¹ with a mortgage balance of \$1,005,352, which, if true would give the debtor
19 unsecured debt well above the \$394,725 cap. However, the \$780,000 value in the debtor’s schedules is
20 not supportable, so that the Bush debt is mostly secured, giving debtor secured debt well in excess of
21 the \$1,184,200 cap (\$1,005,352 mortgage plus \$850,624.71 judgment lien). Thus, the disclosure of the
22 amount of the Bush debt reveals that Mr. Gumbs is ineligible for Chapter 13, whether the debt is
23 considered secured or unsecured.

24 **WHEREFORE**, creditor requests that the Court deny confirmation of the currently
25 proposed Chapter 13 Plan and dismiss the Chapter 13 case.

26 DATED: September 22, 2017.

LEADER-PICONE & YOUNG, LLP

27 BY: 

28 MALCOLM LEADER-PICONE
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¹ Redfin values the home at \$1,773,280, more than twice debtor’s value Schedule A/B.
<https://www.redfin.com/CA/Danville/4291-Silver-Meadow-Ct-94506/home/987782>

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